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**OFFICE OF PETITIONS**

In re :  
Charles Kownacki et al. : DECISION GRANTING  
Reissue Application No. 10/026,674 : PETITION UNDER  
Filed: December 27, 2001 : 37 CFR 1.183  
Attorney Docket No. 40047A :

This is a decision on applicants' January 6, 2006 PETITION UNDER 37 C.F.R. §1.47(a), which in effect requests suspension or waiver of the regulations (presumably §1.172) that require all of the inventors to sign a supplemental declaration in a reissue application.

The petition is GRANTED.

U.S. Patent No. 6,006,517 (the '517 patent) issued to Charles Kownacki, Jeffrey Rehkemper and Ronnen Harary on December 28, 1999. A broadening reissue application (the present application) was filed for the '517 patent on December 27, 2001, and it was assigned application number 10/026,674 (the '674 application).

During the prosecution of the '674 application, the Office required a supplemental reissue declaration to correct defects in the original reissue declaration. By non-final Office action mailed July 6, 2005 (and repeated in the non-final Office action mailed December 29, 2005), the examiner advised applicants that the reissue declaration was defective because it failed to contain the statement required under 37 CFR 1.175(a)(1) as to

applicant's belief that the original patent is wholly or partly inoperative or invalid.

On January 6, 2006, applicants filed a supplemental reissue declaration signed by joint inventors Rehkemper and Harary. The declaration included the statement required under 37 CFR 1.175(a)(1)<sup>1</sup>. Thus, the present petition requests, pursuant to 37 CFR 1.183, that the Office waive the requirement for the signature of inventor Kownacki on the supplemental declaration under 37 CFR 1.175(b)(1) filed January 6, 2006 based on his refusal to join in the application.

The provisions of 35 U.S.C. 251, which are directed to reissue of patents, do not address the signature requirements of a declaration or oath in reissue. As to the reissue regulations, 37 CFR 1.172 requires that a reissue declaration or oath be made (and signed) by the inventors, except as otherwise provided (37 CFR §§ 1.42, 1.43, 1.47), where the scope of the claims of the original patent is being enlarged. In addition, 37 CFR 1.175(b)(1), requires that:

For any error corrected, which is not covered by the oath or declaration submitted under paragraph (a) of this section, applicant must submit a supplemental oath or declaration stating that every such error arose without any deceptive intention on the part of the applicant.

[Emphasis added]

37 CFR 1.175(b)(1), taken in conjunction with 37 CFR 1.172, requires that a supplemental oath or declaration be signed by all of the inventors. This is because all oaths or declarations necessary to fulfill the rule requirements in a reissue application are taken together collectively as a single oath or declaration. See *In re Hayes*, 53 USPQ2d 1222 (Comm'r Pat. 1999). Thus, each oath and/or declaration must bear the appropriate signatures of the inventors.

In the present instance, the supplemental declaration is not signed by all of the inventors. 37 CFR 1.183 permits, in an extraordinary situation, waiver of a rule which is not a requirement of the statute, where justice requires such waiver, and applicants have requested, via the present petition, a

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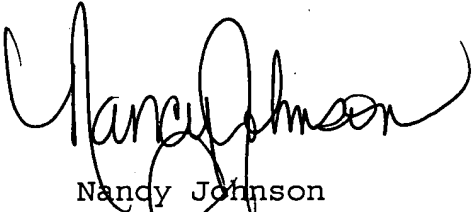
<sup>1</sup> Notwithstanding this decision, the question of the sufficiency of the reissue oath/declaration filed under 37 CFR 1.175 still must in each case be reviewed and decided personally by the primary examiner.

waiver of the requirement that the 37 CFR 1.175(b)(1) supplemental declaration be signed by all of the inventors.

The petition includes a statement of the last known address of the non-signing inventor and payment of the petition fee. By declaration of Susanne Teixeira, the petition includes adequate proof that inventor Kownacki has refused to join in the reissue application after having been presented with the application papers.

The showing as to extraordinary circumstances is complete, 37 CFR § 1.183 can be invoked in order to waive § 1.175. Accordingly, this petition is granted.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a stylized, cursive script.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions